

REMARKS

A Request for a One (1) Month Extension of Time Pursuant to 37 CFR

§1.136(a) and (b) is attached hereto.

The above-captioned patent application has been carefully reviewed in light of the non-final Office Action to which this Amendment is responsive. Claims 1-22 and 54-59 are pending, Claims 23-53 having been withdrawn due to a previous Restriction Requirement. Each of the pending Claims have been rejected based on certain prior art. Applicants' have amended Claims 1, 5, 6, 9, 11, 12, 14, 15, 17, 18, 54 and 56-59 in an effort to further clarify and distinctly point out that which is regarded as the present invention. To that end, no new matter has been added.

Turning to the rejections, Claims 1-22 and 54-59 have been rejected under 35 USC §102(b, b, b, b, e) as being clearly anticipated by each of Miller (U.S. Patent No. 5,523,056), Muszak et al. (U.S. Patent No. 5,419,871), Komiyama et al. (U.S. Patent No. 5,639,425), Clark (U.S. Patent No. 5,358,691) or Clark et al. (U.S. Patent No. 6,190,617), respectively. Applicants' herein respectfully traverse the above rejections based on the following.

First and in order to anticipate under the Statute, each and every claimed limitation must be found in the single cited reference. Those limitations that are not disclosed must be notoriously well known in the field to one of sufficient skill.

Miller '056 refers to an incubator for a clinical analyzer for dry slide elements that is already acknowledged by Applicants' and includes a pair or concentric ring assemblies in which the assemblies are placed one above the other. In this assembly, an elevator is used to interconnect the two assemblies and to move slide elements therebetween. There is no direct connection of the assemblies together, wherein separate shuttles are required for each ring assembly in order to load slide elements into a specified load station or to remove a predetermined slide element from the incubator. That is to say, though there is some savings in overall footprint by providing the twin rotor assemblies of this incubator, there is no true integration between the two assemblies wherein slide elements can move easily between the two rings on a common plane using a single shuttle. The Muszak '871

reference also relied upon by the Examiner in this regard refers primarily to the elevator that is used between the rotor assemblies. Neither reference teaches or suggests movement of test samples or load stations in substantially first and second directions that are provided in a common horizontal plane. Claims 1 and 54 have been amended to more fully clarify and particularly point out these features which are clearly absent from each of Miller and Muszak. Therefore, there can be no anticipation of either claim with regard to either of these references. Claims 2-22 and 55-59 are believed allowable for the same reasons since these claims depend from Claims 1 and 54, respectfully. Reconsideration is respectfully requested.

Attention is now given to each of the remaining prior art references cited by the Examiner with regard to the present claims. As to Komiyama '425, this reference appears to describe an analyzer that as depicted in Fig. 2 includes an incubator 9 that appears to be fixed. In fact, no apparent description is made of this incubator in the technical description of the patent other than at col 2, lines 50-52, "An incubator unit 9 heats a plurality of reaction vessels containing mixtures of a sample and a reagent at a certain temperature, for example 37 C." and col 3, lines 30-34, "The incubator 9 in FIG. 2 has a thermal-conductive metal member and a heating unit for heating the metal member at a given temperature. In the metal member, there are formed a plurality of holes into which the reaction vessels are inserted. These holes are open upward." An illustration of the reaction vessel 8 is shown in Fig. 4. Note that the vessel merely is supported by a lip 53.

Each reaction vessel is loaded from a vessel rack 7 into via a transfer device that extends in the direction 38, see Fig. 2. Once in the incubator, the vessel remains with sample and reagent being brought to the vessel by means of a pipetting mechanism relative to supplies (turntables 2 and 3, respectively). A measuring unit is shown 46 for measuring a reaction liquid, but it is clear from the drawings and the related description that this unit, though a part of the analyzer, is NOT an actual part of the incubator. A sucking tube is used in connection with a movable arm 14 to bring reaction liquid from the reaction vessel to a flow cell for measurement separately by an optical system of the measuring unit. As noted, this particular read

station, the only one described by the reference, is not disposed within the incubator housing as essentially claimed according to Claims 1 and 54. Similarly, there appears to be no teaching of other essential features provided in Claims 1 and 54 of the present invention. For example, this instant reference fails to recite that the incubator include first drive means for moving an accommodated test sample element or a load station in a first direction and second drive means for moving the load station or accommodated test sample element in a second direction that is substantially orthogonal to the first direction. What the Komiyama reference does recite is that a first arm can move a reaction vessel in a first direction by means of a movable/translatable arm to the incubator and then liquid in the form of either sample and/or reagent can be brought to the incubator by a second arm that is arranged in a second direction relative to the incubator for dispensing into the reaction vessel added to the incubator. The reaction vessel itself, if argued to be a load station by the Examiner, only has a single load position, and not two load positions for accommodating a test sample element, as recited in Claim 1.

Applicant has clarified the present invention by now amending each of Claims 1 and 54 to recite that the test samples have already been dispensed onto a test sample “element”, such as a dry slide element or any other form of sample container, prior to either the first or second drive means acting upon same. Though it is believed the incubator described by the Komiyama reference itself fails to contain the first and second drive means previously recited by Applicant, it is believed this clarification more succinctly describes the invention. Applicant has also amended Claims 5, 6, 9, 11, 12, 14, 15, 17, 18, 56-59, in order to conform to the changes to amended Claims 1 and 54. No new matter has been added, as support is repletely found in the specification, see for example, Fig. 10.

As a result, it is believed that neither Claim 1 nor Claim 54 can be anticipated by Komiyama. Reconsideration is respectfully requested.

In passing, it appears that the Examiner has not provided any import to any of the dependent claims whose limitations have clearly been ignored by citation of the present prior art. For example, it is not remotely understood how the Examiner can

state "clear" anticipation by Komiyama when this reference does not teach or suggest, for example, an incubator having concentric ring assemblies (Claims 2, 3), the utilization of dry slide elements (Claim 14), radial test element shuttling means (Claims 15-17) etc. For these reasons, it is respectfully submitted that any succeeding Action from the Office cannot be final in nature, since the Examiner failed to state any reasons for anticipation with regard to numerous of the dependent claims that "clearly" contained features that were not recited or suggested, even remotely, by the prior art.

With regard to the two Clark references cited by the Examiner, each appear to disclose a random-access automated clinical analyzer that can perform a number of immunoassays. This reference includes turntables that support reagent packs as well as sample wells and a pipetting system that permits metering to contained reaction vessels, as described in a manner similar to that of Komiyama above.

It is believed that the amendments to Claims 1 and 54 patentably distinguish each of these references from the present invention by which first drive means drive one of a test sample element and a load station, having two positions for receiving said element, in a first direction. The two positions of the load station are arranged in a second direction wherein second drive means permit movement of at least one of the accommodated test element and the load station in the second direction relative to an internal read station for reading the test sample element. Though Clark teaches a turntable that is rotatably supported for movement in a first direction, the test elements and/or the load stations are not supported for movement in the second direction, as presently recited. Clark merely teaches addition of reagent and/or sample to a heated turntable through pipetting but does not teach radial or similar shuttling of the test sample elements. It is believed each of the dependent claims are also allowable for the same reasons. Reconsideration is respectfully requested.

In summary, it is believed the above-captioned patent application is now in an allowable condition and such allowance is earnestly solicited.

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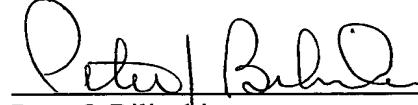
If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicants' representative at the telephone number below.

The Director is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

WALL MARJAMA & BILINSKI LLP

By:


Peter J. Bilinski
Reg. No. 35,067

PJB/sca
Telephone: (315) 425-9000
Customer No.: 20874